IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

TONIA COOPER, Plaintiff, vs. MAYOR AND ALDERMAN CITY OF SAVANNAH, Defendant.	)))))))))	CIVIL ACTION NO.: 4:16-cv-329-WTM-GRS Jury Trial Demanded

COMPLAINT

This action is brought by Plaintiff, a former employee of the Defendant Mayor and Alderman of the City of Savannah (hereinafter the "City of Savannah") pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 1983, and 1988 and shows the Court as follows:

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction of the federal claims asserted in this action under 28 U.S.C. §§ 1331, 1332, 1337, 1338, 1343(a)(4), 1367 and 42 U.S.C. § 1981.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as the Defendant conducts business in this District and as a substantial part of the events or omissions giving rise to the claims occurred in this District.

3. Plaintiff also asserts state-based claims under the supplemental jurisdiction of this court, pursuant to 28 U.S.C. § 1367, to hear and decide claims arising under the laws of the State of Georgia. Jurisdiction is specifically conferred on the Court by 42 U.S.C. 20000e-5. Equitable relief is requested pursuant to 42 U.S.C. 20003-5(g).

II. STATEMENT OF CLAIMS

4. This is a claim for declaratory and injunctive relief for unlawful discrimination based upon gender and retaliation against Plaintiff for engaging in protected activity, in reporting the sexual harassment of an agent of Defendant based upon gender in the terms and conditions of employment pursuant, 42 U.S.C. §§ 2000e, et seq. ("Title VII") and for vicarious liability and supplemental causes of action for intentional infliction of emotional distress, as well as for attorney's fees, compensatory damages, and punitive damages.

5. Plaintiff Cooper exhausted all of her State and Federal administrative procedures prior to filing the instant Complaint.

6. Plaintiff received her right to sue letter and this action is timely filed within 90 days of receipt that is attached as exhibit A.

III. PARTIES

7. Plaintiff Tonia Cooper (hereinafter "Plaintiff" or "Ms. Cooper") is a resident of Chatham County, Georgia, in the Southern District of Georgia, and is a citizen of the United States. Plaintiff is a female.

8. Plaintiff was employed by Defendant City of Savannah as a senior property maintenance inspector.

9. Defendant Mayor and Alderman of the City of Savannah (hereinafter the "City") is a municipality in the State of Georgia and is subject to this Court's jurisdiction. The City may be served process serving the City Manager Rob Hernandez at P.O. Box 1027, Savannah, GA 31402 and the Mayor and Alderman of the City of Savannah at P.O. Box 1027, Savannah, GA 31402.

10. Defendant City of Savannah was at all times relevant to this lawsuit a municipality doing business in Savannah, Chatham County, Georgia. As such, Defendant is subject to jurisdiction of this court.

11. Defendant was at all times relevant to this action, an employer as defined under 42 U.S.C. 2000e et seq.

12. Plaintiff at all times relevant to this action, was an "employee" of the Defendant, as defined at 42 U.S.C. § 20000e (f), and is entitled to the protections provided there under.

III. GENERAL ALLEGATIONS

13. Plaintiff Tonia Cooper was hired by Defendant as a property maintenance inspector in October 2008.

14. From November 2013 through September 2015, Plaintiff Cooper was subjected to frequent and unwanted touching and daily sexual language by her supervisor Michael A. Chaney (hereinafter "Chaney") creating a hostile work environment.

15. Chaney grabbed her and kissed her on the mouth on more than one occasion and frequently referred to her as "baby" "honey" and other inappropriate names at the work place.

16. From October 2014 through February 2015, after the Plaintiff refused his unwelcome attentions, Chaney began to retaliate against the Plaintiff and criticized her work and yelled at her frequently.

17. On September 2, 2015, Plaintiff complained to the Bureau chief about the hostile work environment and retaliation.

18. Plaintiff availed herself of the administrative review of the Defendant and reported the continuing harassment to the Human Resources agent of department of the Defendant, Sylvia Perry.

19. Sylvia Perry was removed from the Plaintiff's case and the Defendant began to retaliate against the Plaintiff because she reported Chaney and began adverse write ups adversely affecting her terms and conditions of employment.

20. Similarly situated employees who had not engaged in protected activity committed policy violations.

21. Plaintiff was instructed to disregard policy procedures and was discharged on June 24, 2016.

22. From September 2015 through November 2015, Chaney continued to make inappropriate and unwelcome comments.

CAUSES OF ACTION

COUNT ONE

VIOLATION OF PLAINTIFF'S CIVIL RIGHTS UNDER TITLE VII

23. Plaintiff Cooper repeats, re-alleges and reiterates the foregoing allegations set forth in paragraphs 1 through 22 as if set forth herein.

24. Plaintiff Cooper has suffered and in the future will suffer, actual damages in the form of mental anguish emotional distress and humiliation as a result of Defendant's discriminatory and retaliatory employment practices. Defendant subjected Plaintiff Cooper to gender discrimination based upon her sex, female and subjected Plaintiff Cooper to physical contact which was unwelcome, offensive, sever, persistent, abusive, malicious, intentional, and otherwise wrongful in violation of Title VII.

25. Defendant intentionally discriminated against Plaintiff Cooper because of her gender, female in violation of Title VII, and terminated her employment because she engaged in protected activity in reporting the unwelcome physical contact; adversely affecting the terms, conditions, and privileges of employment, and retaliating against her for asserting his civil rights. *See* 42 U.S.C. § 2000e-2.

26. As a direct and proximate result of the acts of Defendant, Plaintiff Cooper has suffered lost wages and benefits, severe emotional distress, humiliation and embarrassment. Plaintiff has also incurred attorney's fees and court costs.

COUNT TWO

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

27. Plaintiff adopts and incorporates by reference paragraphs 1 through 26 as if fully set forth herein.

28. Defendant's acts and omissions set forth above conduct were intentional, reckless, extreme, and outrageous. Defendant's actions caused Plaintiff emotional distress, and Plaintiffs' emotional distress was severe. Defendant's unlawful conduct was directed at Plaintiff, and there was a special employment relationship between Defendant and Plaintiff.

COUNT THREE

ATTORNEY'S FEES

29. Plaintiff adopts and incorporates by reference paragraphs 1 through 28 as if fully set forth herein.

30. Plaintiff seeks an award of attorney's fees from Defendant in this action.

31. Defendant has been unnecessarily contentious; and has caused Plaintiff additional attorney's fees. Plaintiff is therefore entitled to recover from Defendant the expense of this litigation, including but not limited to reasonable attorney's fees and costs.

32. Plaintiff seeks and is entitled to an award of her attorney's fees pursuant to 42 U.S.C. § 1988(b).

COUNT FOUR

PUNTIVE DAMAGES

33. Plaintiff adopts and incorporates by reference paragraphs 1 through 32 as if fully set forth herein.

34. Defendant showed willful misconduct, malice, wantonness, oppression, or that want of care, which would raise the presumption of conscious indifference to consequences.

35. Plaintiff is entitled to an award of punitive damages in an amount to be determined in the enlightened conscience of a fair and impartial jury, not as compensation to Plaintiff but solely to punish, penalize or deter Defendant from such wrongful conduct in the future.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff prays that process issue according to law and demand judgment against Defendant as follows:

a) All damages that may be awarded under Title VII, 42 U.S.C. § 1983, and Georgia law; general compensatory damages including but not limited to damages for mental and emotional distress plus interest;

b) Special damages;

c) Punitive damages;

d) Injunctive relief including but not limited to reinstatement or rehire with effective raises and pay increases from the date of Plaintiff Cooper's termination and/or money damages for Plaintiff's lost benefits, lost vacation time, lost personal time, sick time and other lost time;

e) Injunctive relief preventing and prohibiting Defendant from engaging in their present practices in violation of the law cited herein;

f) Reasonable attorney's fees expenses and costs pursuant to 42 U.S.C. § 1988; and

g) Such other further and different relief as this Court deems just and proper.

Respectfully submitted this 7th day of December, 2016.

/s/Gwendolyn Fortson Waring
Gwendolyn Waring, Esq.
State Bar No. 270110

221 W. 31st Street
Savannah, GA 31401
912.477.5590
912.238.0207 facsimile
gswaring@aol.com

EEOC Form 161 (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Tonia T. Cooper**
2609 Mississippi Ave
Savannah, GA 31404

From: **Savannah Local Office**
7391 Hodgson Memorial Drive
Suite 200
Savannah, GA 31406

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
415-2016-00811	**Diego Torres, Investigator**	**(912) 920-4492**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

[X] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

[signature] for

Bernice Williams-Kimbrough,
Director

9-13-16
(Date Mailed)

Enclosures(s)

cc:

Joy Wilkinson
Interim Human Resource Director
CITY OF SAVANNAH
P.O. Box 1027
Savannah, GA 31402

Gwendolyn Fortson Waring, Esq.
THE WARING LAW FIRM, LLC
221 W. 31ST. Street
Savannah, GA 31401

EXHIBIT
A

PENGAD 800-631-6989

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

TONIA COOPER

(b) County of Residence of First Listed Plaintiff CHATHAM
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

GWENDOLYN FORTSON WARING
221 W. 31st Street, Savannah, GA 31401 (912) 447-5590

DEFENDANTS

MAYOR AND ALDERMAN CITY OF SAVANNAH

County of Residence of First Listed Defendant CHATHAM
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT

- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY

- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY

- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY

- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY

- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS

- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☒ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:

- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:

- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY

- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR

- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION

- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY

- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS

- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES

- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
42 U.S.C. sec. 1983, 1988

Brief description of cause:
Title VII, racial discrimination

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE 12/7/16

SIGNATURE OF ATTORNEY OF RECORD [signature]

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______